RICHARD K. GROSBOLL, State Bar No. 99729
BENJAMIN K. LUNCH, State Bar No. 246015
NEYHART, ANDERSON, FLYNN & GROSBOLL
369 Pine Street, Suite 800
San Francisco, CA 94104
Tel. (415) 677-9440
Fax (415) 677-9445
Email: rgrosboll@neyhartlaw.com
blunch@neyhartlaw.com

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

(San Francisco Division)

U.A. LOCAL NO. 467 PENSION TRUST FUND; U.A. LOCAL NO. 467 HEALTH AND WELFARE TRUST FUND; PIPE TRADES APPRENTICE AND JOURNEYMEN TRAINING TRUST FUND FOR SAN MATEO COUNTY; U.A. LOCAL NO. 467 VACATION TRUST FUND; MARK BURRI, as Trustee of the above,

Plaintiffs,

vs.

COOL BREEZE REFRIGERATION, INC.,

Defendant.

Case No.

COMPLAINT

Plaintiffs allege:

I.

COMMON FACTUAL ALLEGATIONS

1. Jurisdiction. This is an action to collect unpaid contributions to multi-employer benefit plans pursuant to the terms of each plan and a collective bargaining agreement. Jurisdiction is pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a), (e) and (g), 29 U.S.C. § 1145 and the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185. Jurisdiction also exists pursuant to 28 U.S.C. § 1331.

2. Venue. Venue is appropriate in this District as the plaintiff plans are administered in this District (Santa Clara County), the Defendant conducts business here (in San Mateo County) and the breach took place in this District; 29 U.S.C. § 1132(e)(2).

PARTIES

3. Plaintiffs U.A. LOCAL NO. 467 PENSION TRUST FUND (hereafter the "Pension Trust"); U.A. LOCAL NO. 467 HEALTH AND WELFARE TRUST FUND (hereafter the "Health Care Trust"); PIPE TRADES APPRENTICE AND JOURNEYMEN TRAINING TRUST FUND FOR SAN MATEO COUNTY (hereafter the "Training Trust"); U.A. LOCAL NO. 467 VACATION TRUST FUND (hereafter the "Vacation Trust") are multi-employer employee benefit plans pursuant to ERISA, 29 U.S.C. § 1002(3), (37) and 29 U.S.C. § 1132(d)(1) and are jointly trusteed employee benefit trusts pursuant to the LMRA, 29 U.S.C. § 186(c)(5). Hereafter, the Pension Trust, the Health Care Trust, the Training Trust and the Vacation Trust will be collectively referred to as the "Trusts." Employers make contributions to the Trusts pursuant to the requirements of their Collective Bargaining Agreement(s) ("CBAs") with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the

United State and Canada (hereafter “the union” or “UA”) and certain of its local unions and the Northern California Mechanical Contractors Association, the Plumbing-Heating-Cooling Contractors Association of the Greater Bay Area, and Industrial Contractors, UMIC, Inc. (collectively hereafter “Employer Associations”). The Trusts are the authorized agents or successors to earlier Trusts under the agreement between the Union and the Defendant.

4. Plaintiff MARK BURRI is a Trustee and Fiduciary of the Pension Trust, the Health Care Trust, the Training Trust and the Vacation Trust within the meaning of ERISA § 402, 29 U.S.C. § 1102. As a Trustee, Mr. Burri has the duty, jointly exercised with the other Trustees of those funds, to administer the Trusts for the exclusive benefit of the covered employees in accordance with the Labor Management Relations Act ("LMRA") § 302(c)(5), 29 U.S.C. § 186(c)(5), ERISA, and the terms of each of the Trusts' written Trust Agreements. That fiduciary duty includes the collection of unpaid employer contributions and related losses.

5. The Health Care Trust is the authorized collection agent for each of the Trusts. Mr. Burri is a Trustee of the Health Care Trust. All debts of the Trusts are treated as debts of the Health Care Trust for collection purposes. The Health Care Trust also collects on behalf the following funds (which are enumerated in the CBA: International Training Fund, Hiring Hall Trust Fund, Contract Administration Fund and Industry Promotion & Advertising Fund.

6. Defendant COOL BREEZE REFRIGERATION, INC. (hereafter “Cool Breeze”) is a corporation. Plaintiffs are informed and believe Cool Breeze is incorporated in Nevada. Plaintiffs are informed and believe Cool Breeze does business in California with corporate number C3505806. Cool Breeze agreed to be bound to the terms and conditions of the most recent Collective Bargaining Agreement ("CBA") between the UA and the Employer Associations. The CBA specifies the rate of pay, rules and working conditions of employees engaged in plumbing,

steamfitting and/or pipefitting industry work and requires the Defendant to make timely monthly contributions to the Trusts for fringe benefits for its covered employees. The applicable Trust fund contribution rates are also set forth in the CBA. Any employer who agrees to be bound to the CBA also agrees to be bound to the respective Trust Agreements.

7. Cool Breeze is, and at all times material hereto has been a business entity providing plumbing, steamfitting and/or pipefitting contracting services to businesses and residential consumers. Cool Breeze holds California contractor's license #960225. Cool Breeze engages in the plumbing, steamfitting and/or pipefitting industry and/or contracting business in San Mateo County, California, and surrounding areas.

8. At all times material herein, Cool Breeze has engaged in the construction industry in California and as such have been an "employer" "engaged in an industry or activity affecting commerce" within the meaning of 29 U.S.C. § 152 ("National Labor Relations Act"), 29 U.S.C. § 185 ("Labor Management Relations Act") and 29 U.S.C. §§ 1002(5), 1003 and 1145 ("ERISA").

9. Cool Breeze failed to submit required monthly transmittals for the months of September 2015 and October 2015. Plaintiffs are informed, and believe that Cool Breeze failed to pay required contributions for September 2015 in the approximate amount of $12,476.56. Plaintiffs are informed, and believe that Cool Breeze failed to pay required contributions for October 2015 in the approximate amount of $4,208.96. Cool Breeze also underpaid required contributions for July 2015 and August 2015, in the amounts of $165.78 and $365.76, respectively.

10. Pursuant to the CBA and/or Trust Agreements and 29 U.S.C. § 1132(g), an employer who fails to make timely contributions to the Trusts for employee fringe benefits is liable to the trusts for all unpaid contributions, liquidated damages, interest on the unpaid principal and reasonable attorneys' fees.

II.

FIRST CLAIM

(ERISA - 29 U.S.C. § 1145)

11. Plaintiffs incorporate by reference and reallege paragraphs 1-10 as if set out in full.

12. Cool Breeze's actions constitute a failure of an employer to submit monthly transmittals and make contributions to a multi-employer plan pursuant to 29 U.S.C. § 1145.

13. Plaintiffs are entitled to judgment for all unpaid contributions, the greater of liquidated damages or an amount equal to prejudgment interest, prejudgment interest and reasonable attorneys fees and costs pursuant to 29 U.S.C. § 1132(g)(2), the CBA and the applicable Trust Agreements.

IV.

SECOND CLAIM

(LMRA - 29 U.S.C. §185)

14. Plaintiffs incorporate by reference and reallege paragraphs 1-10 and 12-13 as if set out in full.

15. Cool Breeze's failure to pay contributions and submit monthly employer contribution transmittals owing breached the collective bargaining agreement between Cool Breeze and the Union to the detriment of the Plaintiffs. As a result, Plaintiffs are entitled to damages, liquidated damages, interest, attorneys' fees and costs pursuant to the agreement. As such, Plaintiffs are a third-party beneficiary to that agreement.

V.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray judgment as follows:

1. For an Order compelling Defendant to produce and submit all missing monthly transmittals to Plaintiffs;

2. For unpaid principal amounts discovered owing and further amounts according to proof;

3. For liquidated damages and/or late fees discovered owing and further amounts according to proof;

4. For prejudgment interest on the late employer contributions;

5. For such equitable relief as this court deems just and proper;

6. For reasonable attorneys fees and costs of suit, according to proof, and

7. For such other and further relief as this court deems just and proper.

Dated: March 10, 2017

Respectfully submitted,

NEYHART, ANDERSON,
FLYNN & GROSBOLL

By: /s/Benjamin K. Lunch________
Benjamin K. Lunch
Attorney for Plaintiffs.